U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-P-G-

DATE: AUG. 8, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, describing itself as engaged in "international business," seeks to continue to temporarily employ the Beneficiary as its president under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was employed in a managerial or executive capacity in his former capacity abroad. The Director further determined that the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the Director did not provide adequate analysis as to how the submitted evidence was insufficient to establish the Beneficiary's managerial and executive capacity abroad and in the United States. The Petitioner states that the Director erred in only analyzing whether the Beneficiary qualified as a manager, and did not consider whether the Beneficiary acted abroad, and would act in the United States, in an executive capacity.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. DEFINITIONS

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The first issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States.

When examining the managerial or executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

Based on the definition of managerial or executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner stated in a support letter submitted in response to the Director's request for evidence (RFE) that the Beneficiary had acted as its president since October 2015 and that he was tasked with "establishing the U.S. entity, overseeing and directing [its] overall management and operation." The

Petitioner further emphasized general accomplishments and projects the Beneficiary had focused on, including setting direction "in developing and investing financially in the research and development.. [redacted] manufacturing in the U.S." The Petitioner indicated that the Beneficiary coordinated "U.S. manufacturing" through a U.S. based vendor [redacted] It further stated that the Beneficiary "made various executive decisions and represented the company in meeting with other company leaders or government officials, and sign[ed] contracts or important business or legal documents on behalf of the company." It also emphasized that the Beneficiary had led the company through "successfully obtain[ing] certifications [in China] for numerous different kinds of [redacted] and facilitated the manufacturing process of the [redacted]."

In addition, the Petitioner pointed to the Beneficiary's "numerous meetings" with two Chinese companies" and "various [Chinese] government authorities" to "conduct strategic planning for the three-party joint construction laboratory." The Petitioner further indicated that the Beneficiary had established "international logistics and marketing related services…which provide excellent and comprehensive service for its customers." The Petitioner noted that the Beneficiary arranged support services [redacted] and bring manufacture business [*sic*] to the U.S. to provide [redacted] China market."

The Petitioner also submitted a lengthy U.S. duty description for the Beneficiary including some of the following duties:

- further develop, add to an edit the company's strategic plan, analyze the company's business advantages in the [redacted] field, analyze companies' potential and ability in developing, marketing and facilitating different projects;
- making the general decisions to setting various goals and targets for the company development, such as the goals of establishing international cooperation to set up research a research and testing facility, warehousing and logistic services, including short term (six months to one year) and long term (three to five years);
- continue to draft, determine, improve and resolve company rules and policies in the company's fund usage, investment, spending, and expense, set up internal auditing and observation systems;
- make adjustments to the company's daily operational procedures based on development needs, including supervision and reporting/monitoring methods and procedures and specific guidelines including time, place and manner of reporting systems for the managers and employees;
- continue to receive periodical reports (weekly, monthly, quarterly) from the subordinates regarding each major function of the company and revise objectives for each function and plans in accordance with current conditions;
- make human resources decisions regarding policies and rules for the company;
- observe the functions of the organization, based on the company's business operation needs, further adjust and determine what departments to be added or deleted;
- represent the company in participating and in important meetings, negotiation and represent the company in various meetings;

- approve/cancel major contract or business correspondence, review and/or sign important business correspondence representing the company, give opinions, instructions as to necessary changes or improvements;
- guide and instruct performance, improve and perfect the guidelines for each department, chair weekly, monthly and quarterly meetings of managers and key personnel.

The Petitioner has submitted a substantially generic U.S. duty description and little documentation to substantiate the Beneficiary's daily qualifying managerial and executive level tasks. The Beneficiary's duty description includes several duties that could apply to any manager or executive acting in any industry and they provide little insight into his actual day-to-day managerial or executive tasks. For instance, the Petitioner did not sufficiently detail or document changes the Beneficiary made to the company's strategic plan, projects he facilitated, company missions, goals, or targets he set, rules and policies he established, or contract negotiation procedures he put in place. Likewise, it did not articulate or document internal auditing and observation systems the Beneficiary set up, operational procedures he adjusted, supervision and reporting methods and procedures he implemented, objectives he revised for the company's functions, instructions he gave his subordinates for future improvement, or human resources rules and policies he put in place.

In addition, the Petitioner did not detail or substantiate with supporting evidence departments he added or deleted or guidance and instructions he provided on performance. In sum, the Beneficiary's duty description, despite its length, included few credible examples of his actual daily managerial or executive level tasks. This lack of detail and documentation is particularly questionable since the Petitioner asserts that the Beneficiary has been acting in his capacity as president since September 2015.[1] Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

We acknowledge that the Petitioner submitted other information and documentation specific to the Beneficiary's activities, but we did not find this evidence sufficient to establish that he would devote a majority of his time to managerial or executive duties in the United States. For instance, the Petitioner emphasized his coordination with two Chinese companies to set up [redacted] services with U.S. vendors. Further, the Petitioner described a complicated application process in China to garner certifications for [redacted] and provided evidence that it obtained them specific to certain [redacted] However, it is not clear how these activities demonstrate the Beneficiary devoting a majority of his time to managerial or executive level duties in the United States as of the date the petition was filed.

The Petitioner submitted a "Cooperation Agreement" it executed with two Chinese companies in September 2017 pursuant to which the parties agreed to coordinate on [redacted] performed in the United States and another such agreement signed in July 2016 with a U.S. company to potentially provide these [redacted] in the United States. However, there is little indication as of the date the petition was filed that these [redacted] services have sufficiently developed. For

[1] The petition was filed on August 30, 2018.

instance, the Petitioner's support letter still refers to "future warehousing and logistics" and the Beneficiary's duty description discusses research and development as to [redacted] that would take place in six months to a year. In fact, despite the Beneficiary acting in his role since 2015, the Petitioner still indicates that a major project for him under the extended petition would be to establish the international logistics and marketing related to the provision of its [redacted] services. Therefore, although there may be some qualifying tasks inherent in negotiating umbrella contracts with other companies to provide services, these are only one off events that took place in July 2016 and September 2017, and it is not clear without further explanation and evidence how this demonstrates that the Beneficiary devoted a majority of his time to qualifying managerial or executive level tasks in the United States as of the date the petition was filed.

Beyond this, the Petitioner has submitted little credible evidence to substantiate his performance of qualifying duties. For example, in the Beneficiary's duty description the Petitioner refers to his hiring of an international business department manager, a manager of management and finance, and a manager of its claimed sales and marketing department; apparently offering these as examples of his qualifying managerial or executive level duties. In each case, the Petitioner's description of these decisions included insufficient detail and supporting documentation. For instance, the Petitioner indicated that the international business department manager was hired due to "specialized knowledge and experience in doing international transactions," that the finance manager was hired because they are "an expert in corporation managing," while the sales and marketing manager was brought on because they "showed skills in marketing strategy planning and developing new clients."

However, these examples of the Beneficiary's managerial or executive level decisions lack credible detail, such as the specifics of his decision making, documentation to support these decisions, and they include overly vague reasoning for his conclusions that bear little relation to the company's specific business. In addition, each one of these examples, even if properly substantiated, are one time hiring decisions, not actual daily managerial or executive duties. In sum, we did not find these examples credible in demonstrating the Beneficiary's primary performance of managerial or executive level duties on a daily basis as of the date the petition was filed; particularly since there is no evidence of him interacting with these employees, these subordinate managers acting in their roles, or him delegating tasks to them.

To further illustrate the vague nature of the supporting evidence provided by the Petitioner related to the Beneficiary's role, it submitted two records of meeting minutes involving the Beneficiary and his claimed managerial subordinates in the United States in July and September 2016. However, these meeting minutes included few credible specifics and only made vague statements such as noting that the Beneficiary "analyzed and reported his decision of company's new direction and focus in development [of] [redacted] manufacture in the U.S." Further, the meetings minutes stated that the "China [*sic*] company's marketing team conducted marketing research and analysis and obtained valuable information," and that his claimed managerial subordinates "will continue to provide support for the US company and to [the Beneficiary]." These asserted meeting minutes provide little indication of what was specifically communicated at these meetings, what marketing research was completed, or what tasks were delegated to the Beneficiary's claimed subordinates.

Likewise, the Petitioner submitted a generic "Company Policy/Code on Ethics & General Standard" dated in February 2017 as apparent evidence of the Beneficiary's qualifying duties. However, the company policy only sets forth basic corporate concepts that could apply to any workplace in any industry, and this document bears little relation to the specifics of its business. The Petitioner also does not explain the Beneficiary's work, if any, on this policy. Again, the Petitioner states that the Beneficiary has been acting in his role as president since 2015; however, it only submits three vague supporting documents to substantiate him managing a claimed international business up until August 2018. There is little detail or documentation to sufficiently corroborate that he was acting in a managerial or executive capacity in the United States as of the date the petition was filed and that he was devoting a majority of his time to qualifying tasks.

Even though the Beneficiary holds a senior position within the organization, the fact that they will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44)(A) and (B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial or executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner submitted an organizational chart indicating that the Beneficiary supervises a management and finance department manager, an international business department manager, and a sales and marketing manager. Further, the chart reflected that the management and finance department manager oversees a general administrator/customer service employee who is shown to supervise an accountant. The chart also showed that the international business department manager oversees a marketing specialist who supervises a logistics employee, while the sales and marketing department manager supervises two sales representatives.

Similar to the Beneficiary's duty description, the Petitioner provided generic duty descriptions for the members of its organizational chart that do not sufficiently substantiate that they act in their asserted roles. For instance, the Petitioner vaguely stated that the management and finance department manager was tasked with directing and coordinating the daily administrative operations of the company, determining what services or products are necessary for the company's development, applying company rules and policies in daily activities, and supervising the complete process of international business. However, there is little indication as to what administrative operations they refer to, what products and services they decided on, the rules and policies that they applied daily, or what the "process of international business" is. Likewise, the Petitioner stated that the international business department manager plans and directs "the international development process for the company in establishing the international platform," directs subordinates "in creation of methods in development

of international business" and manages the "design of methods of promotion of the company services to the international platform." First, the duties of the asserted international business department manager appear to overlap greatly with the claimed duties of the Beneficiary; secondly, these duties do not provide credible specifics to corroborate this claimed subordinate manager's role. For instance, it is not clear to what the Petitioner is referring to when it discussed the international development process or platform.

In addition, the Petitioner explained that the sales and marketing department manager devoted their time to "international marketing development and business management," "designing marketing plans and sales strategies," supervising subordinate sales representatives in "marketing development, sales, negotiation and after-sale services," and making decisions on the addition or deletion of services. Again, the duty description of the subordinate sales and marketing department manager does not include sufficient detail to substantiate this position, such as marketing programs they put in place, sales strategies they implemented, negotiations they conducted, or services they added or removed. In fact, as we previously discussed, there is little evidence on the record to demonstrate that the Petitioner requires an entire sales and marketing department including a manager and two sales representatives. It is not clear from the evidence submitted that the Petitioner has significant sales and marketing activities in the United States nor evident what its two sales representatives are selling. In fact, the Petitioner acknowledges that it has not established logistics in the United States to support its [redacted] services. Indeed, the same can be said for the asserted customer service employee and international marketing specialist; namely, there is little evidence that the Petitioner has substantial marketing activities or customers to justify these positions.

Overall, the submitted evidence does not demonstrate that the Petitioner has sufficient operations to support its claimed organizational chart. First, the Petitioner stated in support letters that it plans to have U.S. vendors perform [redacted] services in the United States and ship these automobiles to China. However, there is little supporting evidence to corroborate that it has sufficiently developed this business since 2015. The Petitioner refers to agreements executed with a U.S. vendor in 2016 and with Chinese companies in 2017; but there is little evidence that this business has sufficiently developed to support the asserted members of its organization in their roles.

For instance, the Petitioner asserts that it employs a fulltime logistics employee focused on shipping [redacted]; however, it only submitted documentation to substantiate the shipment of two [redacted] abroad and its most recent 2017 Form 1120 U.S. Corporation Income Tax Return reflects that it incurred only a little more than $5,000 in shipping expenses during that year. Similarly, the Petitioner contends that it employs a fulltime sales and marketing manager, customer service employee, marketing specialist, and two sales representatives, but there is little evidence to support that it has substantial marketing or advertising in the United States and the 2017 Form 1120 includes no more than nominal expenses for these activities. On the whole, the Petitioner presents a comprehensive organizational chart indicating that it is a fully functional [redacted] and export business; yet, the supporting documentation indicates that this business has yet to sufficiently develop to support these employees.

Furthermore, the Petitioner provides several invoices dating from January 2017 through January 2018 that appear questionable. The majority of the invoices provided by the Petitioner reflect charges to

Chinese companies, including the Beneficiary's former foreign employer, for vague services such as "establish growth strategy," "investigate growth opportunities," "uncover market and customer insights," and "perspective and strategic direction." Beyond these vague and uncertain invoices, it is not clear how the Petitioner generated the one million dollars in revenue it reported in its 2017 IRS Form 1120.

Further, the Petitioner provided bank statements dating from January 2017 through July 2018 that provide little indication that it is the fully functioning [redacted] and export business it purports to be. The bank statements from this period include no expenses for the regular operation of its asserted business; such as costs in purchasing [redacted] marketing, selling, or shipping them. In fact, during this period, the bank account records only reflect debits for cable, cell phone, and other utility bills to support its small office suite, but no other indication that the business is regularly operating. Despite this, the bank account shows significant deposits from unidentified entities abroad, which are left unexplained and appear to bear little relation to its asserted business in the United States and the submitted invoices. In short, the supporting documentation of the Petitioner's asserted operations is insufficient and inconsistent and does not support its claimed organizational structure. The Petitioner must resolve this inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the Petitioner contends that the Director did not properly consider that the Beneficiary would act in an executive capacity in the United States. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

However, as we have discussed, the provided evidence is not sufficient to demonstrate that the Beneficiary would act in an executive capacity in the United States. The Petitioner has submitted an overly generic duty description for the Beneficiary that bears little relation to its specific business and which includes few credible details. It has also not provided sufficient supporting documentation to establish the Beneficiary's asserted executive level role. In addition, the Petitioner provided similarly vague duty descriptions for the Beneficiary's claimed subordinates which do not properly corroborate their positions. Further, as we discussed, the submitted evidence does not demonstrate that the Petitioner is operating sufficiently to support its claimed organizational structure. As such, the Petitioner has not credibly established that the Beneficiary would act within a complex organizational hierarchy and primarily focus on the broad goals and policies of the organization rather than its day-to-day operations.

Therefore, for the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial or executive capacity under the extended petition.

IV. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The next issue we will address is whether the Petitioner established that the Beneficiary was employed in a managerial or executive capacity abroad prior to his entry into the United States as a nonimmigrant in 2015. Because of the dispositive effect of the above finding of ineligibility; namely, our affirmation of the Director's conclusion with respect to the Beneficiary's asserted managerial or executive capacity in the United States, we will only briefly address the remaining issue pertaining to his former employment abroad.

The Petitioner indicated that the Beneficiary was a founding member of the foreign employer and that he had acted as its "top executive" from August 2009 until October 2015. In a support letter, the foreign employer vaguely explained that the Beneficiary "led the company in its development from service provider into a multi-business structure, including technological services, research and development, design, manufacture, marketing and sales and after sales services support, and further developed international operations." Likewise, the Petitioner provided a similarly generic foreign duty description for the Beneficiary which did not provide details, nor did it submit probative documentation, to substantiate the "guidelines for adding, merging or deleting groups or teams" he implemented, "necessary changes" he made to the organization, strategic plans he developed, vision or missions he set, or what "bringing the company to the international platform" specifically entailed.

In addition, the foreign employer did not detail procedures the Beneficiary designed and determined, administrative processes and measures he set up, general management guidelines he issued, goals and targets he established for sales, financial decisions he made, regulations for company operation he put in place, or "major contracts" he negotiated and approved. This lack of detail and documentation is particularly questionable since the foreign employer indicated that the Beneficiary acted as its lead executive for approximately six years. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108.

With respect to the foreign employer organizational structure, the Petitioner provided an organizational chart indicating that the Beneficiary oversaw a general manager supervising a deputy general manager. The deputy general manager was shown to have overseen a financial executive and sales, marketing, administration, and after sales managers. These department managers were shown to supervise various unidentified operational level employees. In total, the Petitioner indicated that the Beneficiary oversaw 31 personnel abroad.

However, the Petitioner only provided duty descriptions for five department managers, and these subordinate duty descriptions were very similar to those provided for his asserted managerial subordinates in the United States. For instance, much like the Beneficiary's duties, the duties of the administrative manager abroad indicated that they were tasked with supervising the company's administrative and human resource management, setting operational procedures, interpreting rules,

policies and operational procedures, and providing necessary services to the company. However, there is little indication as to what procedures, rules, policies, or services to which it is referring and the duty descriptions of his foreign subordinates include no credible details. For example, the Petitioner stated that the sales manager abroad was tasked with directing and managing the marketing sales business' overall activities, analyzing industry and competitor information, leading subordinates in developing new plans, and designing specific steps to carry out the plans. Yet, in each case, there are no specifics as to these activities, competitors, or plans.

The Petitioner also provided correspondingly vague duty descriptions for the asserted financial, marketing, and after sales managers abroad. Again, these duty descriptions for the Beneficiary's asserted managerial subordinates abroad are generic and could apply to any managers acting in any business or industry and they do not credibly demonstrate the foreign employer's claimed organizational structure. In fact, it is noteworthy that the record includes little supporting documentation to substantiate these foreign managers acting in their roles or taking direction from the Beneficiary from 2009 through 2015.

For the foregoing reasons, the Petitioner has not established that the Beneficiary acted in a managerial or executive capacity abroad.

V. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity in the United States or that he was employed abroad in a managerial or executive capacity. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of U-P-G-*, ID# 4577634 (AAO Aug. 8, 2019)